

## **ZONING BOARD OF APPEALS MEETINGS**

**August 7, 2014**

The Zoning Board meeting was called to order by Chairman Mike DeWitt at 6:33 PM.

**PRESENT:** Chairman DeWitt, Members: Dumke, Schumacher, Kirszenstein and Gaffney, Attorney Trapp, Stenographer Lauren Sherwood from Edith Forbes Court Reporting, Mike & Rosemary Rataczyk, Jeremy & Nicole Rataczyk, Sue Lorenzi, Justin Kubiak and Melanie Colello.

**Absent -** CEO Czechowski

### **Alden Automotive, 13151 Broadway 6:30 pm**

The purpose of this meeting was to render a decision on a variance request from Alden Automotive for signage from a Public Hearing that was held on July 15. Alden Automotive has filed a sign application to locate a LED/EVM sign on the premises, which was denied by the Code Enforcement Officer

At this point, Chairman DeWitt explained the procedures for this meeting. As the Public Hearing portion was held on July 15 and is complete, no public comments were to be heard.

And the orders of the decisions, as two are scheduled for the same date.

- 1.) Alden Automotive
- 2.) LaPaloma, as there was an audience for Alden Automotive in attendance, and no one was present for LaPaloma Restaurant.

At this point, Chairman DeWitt recommended the ZBA discuss some factors that needed to be considered. The Chairman stated that Alden Automotive is located in a commercially zoned district and signs are needed, which the board was in agreement with.

Brian Schumacher –totally for signs for business, but was sympathetic for neighbors who would be effected by location and intensity of sign, suggesting changing the position or height of the sign, and limiting the hours the sign could be lit.

Chairman DeWitt – the application is seeking to improve visibility to improve business, do we take that at face value, due to the lack of documentary evidence provided by the applicant.

Charlie Gaffney – no way of telling/projecting. Change of hours; no evidence provided by the applicant, for that would matter. Neighbor voices substantial opposition, no attempt by applicant to address, although this is not a requirement. Raise the height of the sign.

Chairman DeWitt – a lot of people came in to make comments at the Public Hearing held July 15, we need to consider that for the record.

Dr. Mathew Will (neighboring business) – in favor, good for advertising

Nathan Neill (neighboring business) – sign should be a non issue.

Katie and Adam Bakos – recommended friends, but they drive by without seeing it.  
Ken Kohl (local resident) – no objections  
Jen Zucarello – needs sign for the business  
Sue Lorenzi (neighbor immediately to the east) – opposed as it blocks the window and shines right in window as well as concerns related to traffic safety and snow removal.

Brian Schumacher – there is an existing light that shines from the street light, then added light emitted from the sign and it is doubled.

Chairman DeWitt – sign on property line, needs to be cognizant of impact on neighbor.

Charlie Gaffney – how much illumination will the sign generate, criteria if modifications that should be part of the motion.

There were some opinions being voiced from the room.

Attorney Trapp – no public comment accepted as there is a decision in front of you.

Other signage would be removed per the applicant, that is what board is to consider.

At this point Chairman DeWitt and the ZBA review the list of 6 criteria to consider for an area variance.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested area variance? **No. Chairman DeWitt – business district, businesses have signs, neighbor has concerns. Brian Schumacher – no negative effects, needs to have sign, would like to satisfy everyone.**

2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue other than an area variance **Yes, Chairman DeWitt – host of possibilities, sign on building, concerns neighbors expressed. Hours of illumination, no evidence options have been considered by applicant. Jeremy Ratajczyk – judgment allows existing signs on building. Chairman DeWitt – new application, new variance. Nicole Ratajczyk – in opposition, referred to the judgment of Shirley Troutman, NYS Supreme Court from July 3. Ordered set of action – zero set back, Judge looked at both sides presented, supposed to disregard other factors.**

3. Whether the requested area variance is substantial? **Yes, given objections by Lorenzi's it is substantial, given snow removal and traffic safety. Tom Kirszenstein agreed with the Chairman, as did Robert Dumke, that it was a valid complaint.**

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? **Chairman DeWitt – can be argued either way, it is in a business district, some issues with regards to illumination. Charlie Gaffney – no substantial physical impact. Brian Schumacher – moving forward to approve illumination hours need to be mitigated/stipulations.**

5. Whether the alleged difficulty was self-created; which consideration shall

Be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance? **Yes. Chairman DeWitt – the applicant could have selected another location, it does not meet code, other options in agreement.**

6. Whether it will create a hazard to health, safety or general welfare?  
**Chairman DeWitt – can answer either way, hazardous – No. Brian Schumacher – don't believe it will be a hazard either way.**

Further discussion prior to decision.

Chairman DeWitt – self created and other methods to achieve signage, neighbor upset, substance to Variance.

Tom Kirszenstein – modification, go thru Alden a lot at night; can shut sign off at 11 pm, not a lot of traffic after 11 pm.

Chairman DeWitt – height of sign does block Lorenzi's view, limit hours.

Michael Ratajczyk – sign is as high as it can be according to code.

Chairman DeWitt – would need a Variance for height.

Attorney Trapp – can put stipulations and change code in your motion.

Chairman DeWitt – for street lights, the CEO measured height 16 ft. from street to bottom of globes.

Michael Ratajczyk approached the board with picture information.

Attorney Trapp – closed matter in terms of evidence, cannot accept new evidence at this time.

The board then discussed options for the motion.

Michael Ratajczyk – proposed sign not shorter or taller than the flags that are on the street light poles.

Chairman DeWitt – asked that no further comments be made at this time.

Tom Kirszenstein – asked how the sign illumination would be monitored

Michael Ratajczyk – run on timers.

Bob Dumke – sign now 16' tall. Make it 6'taller, it would be 24' to the top of the sign, and would be out of the neighbors window.

Brian Schumacher – move ahead at this point, justification of height 16 feet from ground to bottom of sign box.

Chairman DeWitt – would make it same height as street sign, if made 6'taller, rest of sign can remain the same. Top window of neighbor, lower than the proposed sign height.

Any other dispositions on lighting before we make the motion?

Brian Schumacher – other stipulation light on Lorenzi's side of sign, shut off at 11 pm, other side can remain lit.

**MOTION** by Schumacher, seconded by Kirszenstein, to approve variance with the following stipulations: 1)The sign height shall be 16 feet measured to the bottom of the sign box 2)Illumination of the east side of the sign shall be terminated by 11:00PM 3)The remaining signs on the property shall be removed 6:58 PM. Unanimous. Carried.

Michael Ratajczyk – still keep the 156ft. of signage, ruling from court.

Attorney Trapp – we will be back in court if that is the case.

Michael Ratajczyk – court ruled in our favor

Attorney Trapp – we will be back in court

Michael Ratajczyk – why do you people have to make this so difficult?

**LaPaloma Restaurant 13268 Broadway 6:59 pm**

The purpose of this meeting was to render a decision on a variance request from LaPaloma for signage from a Public Hearing that was held on July 15. LaPaloma has filed a sign application to erect a new illuminated double-sided sign cabinet on an existing pole, which was denied by the Code Enforcement Officer.

At this point Chairman DeWitt and the ZBA entered into discussion concerning variance request.

Chairman DeWitt led the conversation. It is a business district, no issues with having a sign. Frank is repairing a dilapidated sign that is an eyesore to the community. The Chairman then cited the code that a sign can be repaired without a permit, but the CEO interpreted the code differently. Grant minimal variance possible.

Brian Schumacher – the neighbor, Mathew Will, DVM, spoke in favor of granting the variance at the Public Hearing, and he is located across the street.

Bob Dumke - No neighbors cited any opposition.

Chairman DeWitt and the board reviewed the list of 6 criteria.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested area variance? **No. Chairman DeWitt- it is in a commercial district, sign is needed. Brian Schumacher – if existing sign not fixed it will be a problem, deteriorating, it would be a benefit to fix.**

2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue other than an area variance? **No, not without greater expense due to use of existing pole and base.**

3. Whether the requested area variance is substantial? **No, as it will repair dilapidated sign.**

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? **No. Improves neighborhood, repairs dilapidated sign.**

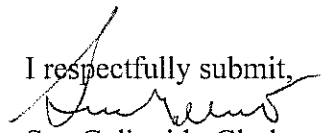
5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance? **No. Purchased with existing deteriorating sign.**

6. Whether it will create a hazard to health, safety or general welfare? **No, just the opposite, unaddressed the sign could fall and be a safety concern.**

MOITON by Robert Dumke and seconded by Charles Gaffney to approve this variance. 7:03 pm. Unanimous. Carried.

MOTION by Tom Kirszenstein, seconded by Robert Dumke to adjourn 7:04 pm.  
Carried.

I respectfully submit,



Sue Galbraith, Clerk  
Zoning Board of Appeals